



Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov) (<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the **Addresses** section on or before [Insert date 60 days from publication].

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N- 5718, Washington, DC 20210, ebsa.opr@dol.gov, (202) 693-8425 (this is not toll-free numbers).

SUPPLEMENTARY INFORMATION: This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Section 408(b)(2) Regulation.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0133.

Affected Public: Private Sector.

Respondents: 55,703.

Responses: 1,483,062.

Estimated Total Burden Hours: 1,045,680.

Estimated Total Burden Cost (Operating and Maintenance): 1,251,649.

Description: The prohibited transaction described in section 406(a)(1)(C) of ERISA generally prohibits the furnishing of goods, services, or facilities between a plan and a party in interest to the plan. Because ERISA defines any person furnishing services to the plan as a “party in interest” to the plan, a service relationship between a plan and a service provider would constitute a prohibited transaction under section 406(a)(1)(C) in the absence of relief. Section 408(b)(2) of ERISA provides relief, however, for service contracts or arrangements if the contract or arrangement is “reasonable,” if the services are necessary for the establishment or operation of the plan, and if no more than “reasonable” compensation is paid for the services.

This information collection relates to the final rule under ERISA section 408(b)(2), which was published in the Federal Register on February 3, 2012 (77 FR 5632). Under the final rule, for a contract or arrangement to be "reasonable," certain service providers must disclose specified information to a pension plan, in writing, before the plan may enter into, extend, or renew the contract or arrangement. The Department also issued a class prohibited transaction exemption contained in paragraph (c)(1)(ix) of the final rule, which provides relief from ERISA’s prohibited transaction rules for plan fiduciaries that enter into a contract or arrangement with service providers upon a mistaken belief that they have received all of the disclosures required by the final rule. Upon discovering that a covered service provider failed to disclose all of the required information, the responsible plan fiduciary must take reasonable steps to obtain such information, including requesting in writing that the covered service provider furnish the information in order to rely on the exemption and notify the Department if the service provider fails to comply with the written request within 90 days. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0133. The current approval is scheduled to expire on August 31, 2021.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Procedure 1976-1; Advisory Opinion Procedure.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0066.

Affected Public: Private Sector.

Respondents: 17.

Responses: 17.

Estimated Total Burden Hours: 175.

Estimated Total Burden Cost (Operating and Maintenance): 459,091.

Description: This information collection relates to ERISA Procedure 76-1, which provides specific guidance to the public on issues arising under ERISA, particularly when needed to guide specific transactions involving employee benefit plans and plan assets. The information required by ERISA Procedure 76-1 is used by EBSA to understand and analyze the issues and develop the response, as well as to determine whether EBSA’s response should be in the form of an advisory opinion or information letter. Section 6 of ERISA Procedure 76-1 lists the information that must be supplied by the party requesting an advisory opinion. This information includes identifying

information (name, type of plan, EIN Number, etc.), a detailed description of the act(s) or transaction(s) with respect to which an advisory opinion is being requested, a discussion of the issues presented by the act(s) or transaction(s), a statement of the party's views concerning the issues to be resolved and the legal basis for such views. The requesting party must also include copies of the relevant documents and may also request a conference with EBSA in the event that EBSA is considering issuing an adverse opinion. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0066. The current approval is scheduled to expire on November 30, 2021.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act of 1974 Technical Release 1991-1.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0084.

Affected Public: Private Sector.

Respondents: 4.

Responses: 26,966.

Estimated Total Burden Hours: 422.

Estimated Total Burden Cost (Operating and Maintenance): 6,917.

Description: Section 101(e) of ERISA establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under the conditions set forth in section 420 of the Internal Revenue Code of 1986, as amended (the Code). On May 8, 1991, the Department published ERISA Technical Release 91-1, to provide guidance on how to satisfy the notice requirements prescribed by this section. This information collection involves third-party disclosures and reporting to the federal government. First, information must be disclosed to plan participants and beneficiaries by plan administrators. This requirement is designed to protect the rights of participants and beneficiaries in their retirement benefits by providing them with advance notice of any anticipated transfer of defined benefit plan assets (under section 420 of the Code). Second, advance notification must also be provided by employers to plan administrators, employee organizations that represent participants, and the Department. Plan administrators and employee organizations have an interest in protecting the interests of plan participants and beneficiaries with their retirement benefits. The Department also has the duty to enforce the protections provided to participants and beneficiaries under ERISA. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0084. The current approval is scheduled to expire on November 30, 2021.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Annual Information Return/Report of Employee Benefit Plan.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0110.

Affected Public: Private Sector.

Respondents: 814,000.

Responses: 814,000.

Estimated Total Burden Hours: 582,000.

Estimated Total Burden Cost (Operating and Maintenance): 278,555,000.

Description: This information collection relates to section 104 of ERISA, which requires administrators of employee benefit pension and welfare plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government. The Form 5500 return/reports are the principal source of information and data available to the Department, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation (the Agencies) concerning the operation of employee benefit plans. For this reason, the Form 5500 constitutes an integral part of the Agencies' enforcement, research, and policy formulation programs. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0110. The current approval is scheduled to expire on November 30, 2021.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Disclosures by Insurers to General Account Policyholders.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0114.

Affected Public: Private Sector.

Respondents: 368.

Responses: 27,009.

Estimated Total Burden Hours: 114,789.

Estimated Total Burden Cost (Operating and Maintenance): 10,128.

Description: Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104-188) (SBJPA) amended ERISA by adding section 401(c). This section requires the Department to promulgate a regulation providing guidance, applicable only to insurance policies issued on or before December 31, 1998, to or for the benefit of employee benefit plans, to clarify the extent to which assets held in an insurer's general account under such contracts are "plan assets" within the meaning of ERISA, because the policies are not "guaranteed benefit policies" within the meaning of section 401(b) of ERISA. SBJPA further directed the Department to set standards for how insurers should manage the specified insurance policies (called Transition Policies). Pursuant to the authority and direction given under SBJPA, the Department promulgated a final rule on January 5, 2000 (65 FR 714) that is codified at 29 CFR 2550.401c-1.

Regulation section 29 CFR 2550.401(c)-1 imposes specific requirements on insurers that are parties to Transition Policies in order to ensure that the fiduciaries acting on behalf of plans have adequate information and understanding of how the Transition Policies work. This information collection requires that an insurer that issues and maintains a Transition Policy to or for the benefit of an employee benefit plan must disclose to the plan fiduciary, initially upon issuance of

the policy and on an annual basis, to the extent that the policy is not a guaranteed benefit policy: (1) the methods by which income and expenses of the insurer's general account are allocated to the policy, the actual annual return to the plan, and other pertinent information; (2) the extent to which alternative arrangements supported by the assets of the insurer's separate accounts are available; (3) any rights under the policy to transfer funds to a separate account and the terms governing such right; and (4) the extent to which support by assets of the insurer's separate accounts might pose differing risks to the plan. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0114. The current approval is scheduled to expire on November 30, 2021.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Registration for EFAST-2 Credentials.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0117.

Affected Public: Private Sector.

Respondents: 279,894.

Responses: 279,894.

Estimated Total Burden Hours: 93,298.

Estimated Total Burden Cost (Operating and Maintenance): 0.

Description: ERISA section 104 requires administrators of pension and welfare plans and employers sponsoring certain fringe benefit plans and other plans of deferred compensation to file returns/reports annually with the Secretary of Labor concerning the financial condition and operation of plans. Reporting requirements are satisfied by filing the Form 5500 in accordance with its instructions and the related regulations.

This information collection relates to the ERISA Filing Acceptance System 2 (EFAST-2), which is designed to simplify and expedite the receipt and processing of the Form 5500 by relying on Internet-based forms and electronic filing technologies. In order to file electronically, employee benefit plan Filing authors, Schedule authors, Filing signers, Form 5500 transmitters, and entities developing software to complete and/or transmit the Form 5500 are required to register for EFAST-2 credentials through the EFAST2 website. The information requested for registration includes: applicant type (Filing Author, Filing Signer, Schedule Author, Transmitter, or software developer); mailing address; fax number (optional); e-mail address; company name, contact person; and daytime telephone number. Registrants must also provide an answer to a challenge question ("What is your date of birth?" or "Where is your place of birth?"), which enables users to retrieve forgotten credentials. In addition, registrants must accept a Privacy Agreement; PIN Agreement; and, under penalty of perjury, a Signature Agreement. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0117. The current approval is scheduled to expire on November 30, 2021.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Blackout Period Notice.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0122.

Affected Public: Private Sector.

Respondents: 48,575.

Responses: 9,439,000.

Estimated Total Burden Hours: 218,553.

Estimated Total Burden Cost (Operating and Maintenance): 2,403,893.

Description: The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, amended ERISA to include a blackout period disclosure requirement in subsection 101(i). This information collection requires administrators of individual account pension plans (e.g., a profit sharing plan, 401(k) type plan or money purchase pension plan) to provide at least 30 days advance written notice to the affected participants and beneficiaries in advance of any “blackout period” during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. The Department has received approval from OMB for this ICR under OMB Control No. 1210-0122. The current approval is scheduled to expire on November 30, 2021.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0150.

Affected Public: Private Sector.

Respondents: 223.

Responses: 777,363.

Estimated Total Burden Hours: 181.

Estimated Total Burden Cost (Operating and Maintenance): 197,955.

Description: The Patient Protection and Affordable Care Act, Public Law 111-148, (the Affordable Care Act) was enacted on March 23, 2010 and amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 on March 30, 2010. The Affordable Care Act added section 2713 to the Public Health Service (PHS) Act and incorporated this provision into ERISA and the Code. The Departments of Health and Human Services, Labor, and Treasury first published interim final rules on July 19, 2010, requiring non-grandfathered group health insurance coverage to provide benefits for certain preventive services without cost sharing, including benefits for certain women's preventive health services as provided for in comprehensive guidelines supported by the Health Resources and Services Administration. Additional interim final rules were issued on November 15, 2018, that finalize expanded

exemptions to protect moral and religious beliefs for certain entities and individuals whose health plans are subject to a mandate of contraceptive coverage through guidance issued pursuant to the Affordable Care Act (83 FR 57536 and 83 FR 57592).

The regulations contain the following collections of information:

- (1) Each organization seeking to be treated as an eligible organization to use the optional accommodation process offered under the regulation must either notify an issuer or third party administrator using the EBSA Form 700 method of self-certification or provide notice to HHS of its religious or moral objection to coverage of all or a subset of contraceptive services.
- (2) A health insurance issuer or third party administrator providing or arranging separate payments for contraceptive services for participants and beneficiaries in insured plans (or student enrollees and covered dependents in student health insurance coverage) of eligible organizations is required to provide a written notice to plan participants and beneficiaries (or student enrollees and covered dependents) informing them of the availability of such payments. The notice must be separate from but, contemporaneous with (to the extent possible) any application materials distributed in connection with enrollment (or re-enrollment) in group or student coverage of the eligible organization in any plan year to which the accommodation is to apply and will be provided annually. To satisfy the notice requirement, issuers may, but are not required to, use the model language set forth previously or substantially similar language.
- (3) An eligible organization may also revoke its use of the accommodation process and must provide participants and beneficiaries written notice of such revocation as soon as possible.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0150. The current approval is scheduled to expire on November 30, 2021.

Dated: March 25, 2021.

Ali Khawar,
Principal Deputy Assistant Secretary,
Employee Benefits Security Administration,
Department of Labor.

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